IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2508 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BINUBALA H METHA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR BIPIN P JASANI for Petitioner(s) : 1,
Mrs. Kiran Pande, Asst. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 13/12/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the impugned action of

the respondent on 5.8.1995 and 25th March 1997 and for a declaration that the correct birth date of the petitioner is 6.4.1940 and not 19th March 1939. It is further prayed to direct the respondents to correct her birth date in service book/record of the petitioner as 6.4.1940 for all purposes. It is also prayed to direct the respondents not to relieve the petitioner from service till decision on benefit of term end is taken.

2. While issuing Notice and refusing to grant interim relief, the learned Single Judge of this Court passed a detailed order on 31st March 1997 which reads as under;

> Petitioner who has been serving as Senior Lecturer under the respondent No.4 herein, has preferred this petition for two reliefs. First, the petitioner has claimed that the correct date of her birth is 6th April, 1940 and the date of birth recorded in the service book as that of 19-3-1939 is erroneous and requires to be corrected. In support of her claim she has relied upon a copy of the birth certificate issued by the Jamnagar Borough Municipality on 14-3-1962. Said certificate records birth of a girl child to one Himmatlal Rajaram and Samrat Narbheram. Petitioner has made an affidavit on 17th October, 1962 to the effect that the girl child referred to in the above-referred birth certificate is herself and that her correct date of birth is 6th April,

1940. However, on the basis of the date recorded in the school leaving certificate and the Matriculation certificate the petitioner's date of birth has been recorded as that of 19-3-1939 in her service book. The said entry has been countersigned by the petitioner when she entered in service in the year 1963. Thus, when the petitioner entered in the service, she was in possession of the above birth certificate. However, she did not take any step either to get the correct date entered in the service book nor did she take any step soon thereafter to get it corrected. In view of her date of birth recorded in the service book she has reached the age of superannuation on 18-3-97 and according to the Government rules she is liable to be retired from service with effect from 1st April, 1997. Petitioner made an application in the year 1995 for such correction relying on the Government Resolution dated 11th August 1989. Her application has been rejected under communication dated 5th August 1995. Said action has been challenged by filing the present petition.

Learned Advocate Mr.Jasani has submitted that according to the Government Resolution dated 11th August, 1989, the date of birth recorded in the birth register is final and conclusive and the petitioner has, therefore, a right to get it corrected as is claimed by her. Mr.Jasani has contended that the competent authority has erroneously rejected the petitioner's claim on the ground of limitation. He has submitted that the said decision dated 5th August, 1995 rejecting the petitioner's application is in contravention of the Government resolution dated 11th August, 1989. He has further submitted that the petitioner's right to claim correction in the service book which is conferred under Rule 171 of the Bombay Civil Services Rules cannot be abrogated by the Government Resolution dated 11th August 1989. In support of his claim he has relied upon the judgment of this court in the matter of B.K.Suthar vs. State of Gujarat and Another (1983 GLH 428).

In the matter of B.K.Suthar(supra) the court was considering the action of the Government in modifying the provisions contained in Rule 171 of the Bombay Civil Services Rules under a resolution. The court held that the statutory rule could not be modified by an executive direction. However, it may be noted that pending the petition before the court said Rule 171 was amended by issuing necessary notification. By introducing the said amendment limitation of five years for bringing action for correction of the date of birth in the service record was introduced. The court also considered whether such limitation could affect the existing right of an employee to get the date of birth corrected once it is entered in the service book. Considering various precedents the court held that:

"Laws of limitation are procedural laws and it is

> also well recognized on principle and on authority that procedural laws have retrospective effect because no person has a vested right in the procedure".
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> Thus, in view of the said amendment introduced in Rule 171 of the Bombay Civil Services Rules, right of an employee for correction of a service book was curtailed and limitation of five years from the date of admission to service was introduced. It is this amended provision which is recorded in the above-referred resolution dated 11th August, 1989 and the said provision would apply in the case of the petitioner also. In my view petitioner's claim for correction of her date of birth recorded in her service book is rightly rejected. Petitioner's claim for such correction is, therefore, rejected.
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> Mr.Jasani has next contended that all the teaching staff of various schools and colleges of the Government have a right to continue in service even beyond the age of superannuation if such person reaches the age of superannuation in the midst of an academic term, till the end of the academic term. However, the petitioner's claim for such continuation till the end of academic term i.e. till 31st May 1997 has been erroneously rejected.
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> Notice to the respondents returnable on 15-4-1997. Ad-interim order is refused.
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> Direct service is permitted.'

This Court is in complete agreement with the reasoning given by the learned Single Judge, and for the reasons stated in the said order, the prayer of the petitioner to correct her date of birth cannot be accepted and/or granted. Amended Rule 171 of the Bombay Civil Service Rules disentitles the petitioner to get the relief of correction in her date of birth.

3. So far as the prayer of the petitioner to direct the respondents not to relieve the petitioner from her service till decision of the benefit of term end is taken and to continue her in service till 31st May 1997 is concerned, it is required to be noted that the petitioner retired on 31.3.1997 instead of 31.5.1997. Thus the dispute is only with regard to two months. Even otherwise, now considering the communication dated 25th March 1997, the prayer of the petitioner to retire her with effect from 31.5.1997 was rejected by the competent authority and therefore the prayer of the petitioner not to relieve the petitioner from service till the decision on benefit of term end is taken also has become academic and/or it has become infructuous as the decision is also taken by aforesaid communication. In view of the above, the petitioner is not entitled to any relief as prayed for.

4. For the reasons stated above, the petition fails and is dismissed. Rule is discharged.

[M.R. Shah, J.]

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